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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FITBUG LIMITED, a United Kingdom Limited
Liability Company,

Plaintiff,

v.

FITBIT, INC., a Delaware Corporation,

Defendant.

FITBIT, INC., a Delaware Corporation,

Counter-Claimant,

v.

FITBUG LIMITED, a United Kingdom Limited
Liability Company,

Counter-Defendant.

Case No.: 13-cv-01418-SC

**STIPULATION AND [PROPOSED]
ORDER TO BIFURCATE FITBIT'S
MOTION FOR ATTORNEYS' FEES**

1 On January 26, 2015, the Court issued its Order on Motions for Summary Judgment (Dkt.
2 No. 96), which disposed of each party's claims against the other. On the same day the Court
3 entered Judgment (Dkt. No. 97).

4 Section 1117(a) of the Lanham Act provides that the Court may award fees and costs to
5 the prevailing party in an exceptional case under that Act.¹ Defendant Fitbit intends to file a
6 motion seeking an award of fees and costs. Plaintiff Fitbug Ltd. disputes that it is liable for
7 attorneys' fees and costs under the Lanham Act.

8 Under Federal Rule of Civil Procedure 54(d)(2)(C), the court may "decide issues of
9 liability for fees before receiving submissions on the value of services." In the interest of
10 efficiency for the parties and judicial economy, the parties stipulate to, and ask the Court to
11 approve, an order bifurcating Fitbit's motion for attorneys' fees so that the Court will separately
12 consider (1) whether to award attorneys' fees and costs to Fitbit, and, if so, (2) the amount and
13 reasonableness of the fees and other costs Fitbit seeks. Fitbug agrees to this stipulation on the
14 condition that, in the motion concerning liability, Fitbit shall identify the approximate amount of
15 fees and costs incurred through the date of this stipulation that it seeks (and will not seek more
16 than this amount for its fees and costs incurred to the date of this stipulation in the event the Court
17 rules Fitbit is entitled to recover reasonable attorneys' fees and costs). Fitbit agrees to this
18 condition.

19 The parties further stipulate to, and ask the Court to approve, a briefing schedule on
20 Fitbit's anticipated motion for attorneys' fees whereby Plaintiff Fitbug's opposition to Fitbit's
21 motion shall be filed by April 6, 2015 and Fitbit's reply papers in further support of its motion
22 shall be filed by April 20, 2015.

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28 ¹ Fitbit's motion for award of attorneys' fees and costs is due by March 9, 2015 (Dkt. No. 102).

IT IS SO STIPULATED:

Dated: March 2, 2015.

TARTER KRINSKY & DROGIN LLP

By: /s/ Mark J. Rosenberg
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[PROPOSED] ORDER**IT IS HEREBY ORDERED** that:

- (a) Defendant Fitbit, Inc. shall file its motion for an award of attorneys' fees and costs by March 9, 2015. The motion shall address whether the Court should award attorneys' fees and costs to Fitbit. This motion shall identify the approximate total amount of fees and costs sought for such fees and costs incurred through March 2, 2015, but it need not address the reasonableness of fees or costs or provide supporting evidence of those fees and costs.
- (b) Plaintiff Fitbug's opposition to Fitbit's motion shall be filed by April 6, 2015 and Fitbit's reply papers in further support of its motion shall be filed by April 20, 2015.
- (c) If the Court grants Fitbit's motion, Fitbit shall have 14 days from the date of the order to submit further briefing and declarations supporting the amount and reasonableness of the fees and costs it seeks.

Dated: _____

The Honorable Samuel Conti
United States District Judge

ATTESTATION REGARDING CONCURRENCE

I, Jedediah Wakefield, am the ECF User whose ID and password are being used to file this STIPULATION AND [PROPOSED] ORDER TO BIFURCATE FITBIT'S MOTION FOR ATTORNEYS' FEES. In compliance with Local Rule 5-1, I hereby attest that other counsel whose e-signatures appear above have concurred with this filing.

Dated: March 2, 2015

/s/Jedediah Wakefield
Jedediah Wakefield

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